

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION**

EDDIE JAMES SHORTY

PLAINTIFF

VERSUS

CIVIL ACTION NO. 5:12cv114-DCB-RHW

EMMITT L. SPARKMAN, *et al.*

DEFENDANTS

REPORT AND RECOMMENDATION

Before the Court are [15] and [17] the *pro se* Plaintiff's October 30, 2012 motions requesting, respectively, entry of default and default judgment against all Defendants due to Defendants' failure to plead or otherwise defend this lawsuit. The Court having carefully reviewed the matter, finds the motions should be denied as the docket fails to reflect that any of the Defendants has been properly served with the summons and complaint in this case. Plaintiff filed [13] a return on the summonses issued in the case, stating that he (Plaintiff) "personally served" each Defendant at "WCCF prison law library on 9/25/12." However, Plaintiff is not authorized to serve his summons and complaint. Rule 4(c), FED.R.CIV.P., provides as to service:

(1) **In General.** A summons must be served with a copy of the complaint. The plaintiff is responsible for having the summons and complaint served within the time allowed by Rule 4(m) and must furnish the necessary copies to the person who makes service.

(2) **By Whom.** Any person who is at least 18 years old *and not a party* may serve a summons and complaint. (emphasis added)

RECOMMENDATION

Since the docket reflects no proper service of the summons and complaint on any of the Defendants, there exists no foundation which would allow for entry of default or default judgment against the Defendants, and the undersigned recommends that Plaintiff's motions requesting such relief be denied.

NOTICE OF RIGHT TO APPEAL/OBJECT

Pursuant to Rule 72(a)(3), *Local Uniform Civil Rules of the United States District Courts for the Northern District of Mississippi and the Southern District of Mississippi* (Dec.1, 2011), after service of a copy of this Report and Recommendation, each party has fourteen days to serve and file written objections to the Report and Recommendation. A party must file objections with the clerk of court and serve them upon the other parties and submit them to the assigned District Judge. Within seven days of service of the objection, the opposing party must either serve and file a response or notify the District Judge that he does not intend to respond to the objection.

An objecting party must specifically identify the findings, conclusions, and recommendations to which he objects; the District Court need not consider frivolous, conclusive, or general objections. A party who fails to file written objections to the proposed findings, conclusions, and recommendations within fourteen (14) days of being served a copy shall be barred, except upon grounds of plain error, from attacking on appeal any proposed factual finding or legal conclusion accepted by the District Court to which he did not object. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1428-29 (5th Cir. 1996).

Signed, this the 31st day of October, 2012.

/s/ *Robert H. Walker*

ROBERT H. WALKER
UNITED STATES MAGISTRATE JUDGE